IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

Bail Appl..No. 4612 of 2007()

CRIME NO.229/07 OF MUNAMBAM POLICE STATION

PETITIONER

K.K.PRATHAPAN, AGED 55 YEARS,
S/O.KESAVAN, KOLLERITHARA HOUSE,
KEDAMANGALAM, N. PARUR, ERNAKULAM.

BY ADV. SRI.VAKKOM N.VIJAYAN
SRI.P.ANIYAN
SRI.A.S.SACHIN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE, N.PARUR.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4612 of 2007

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Dated this the 31st day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 8th accused. Altogether there are eight accused persons. The crux of the allegations is that a huge quantity of spirit, 2310 litres, in 66 containers each having 35 litres was seized from the premises of a building taken on lease by the petitioner, who is the licensee of four shops in Group I in the local Panchayat. On receipt of discreet prior information, the police had reached the scene and detected the process of unloading and stocking this huge quantity of spirit. The first accused is the brother of the petitioner, who allegedly was supervising the operations. Accused 2 to 7 were actually present at the scene. Interrogation of the other accused persons and the enquiry relating to the lease document of the property revealed the complicity of the petitioner and he was subsequently arrayed as the 8th accused in the crime. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The building may have been taken by the petitioner on lease. But he cannot be mulcted with liability for what happened in the compound of the building. There is no allegation that the contraband article had been taken from inside the building. In these circumstances the petitioner may not be mulcted with the liability or responsibility for such contraband article seized. Directions under Section 438 Cr.P.C. may be issued in favour of the petitioner, it is urged.

3. The learned Prosecutor opposes the application. He submits that it would be myopic to look at the materials available in the manner canvassed by the counsel.

4. I have considered all the relevant inputs. A detailed discussion about the acceptability of the allegations raised or the credibility of the data collected is not necessary. Suffice it to say that I find merit in the opposition by the learned Prosecutor. The theory that the petitioner cannot be held to be in any way responsible for the contraband article found in the compound of the building, which he had taken on lease, cannot be accepted at this stage to justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where

the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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